

E-FILED on 9/27/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEMRY CORPORATION,

Plaintiff,

v.

KENTUCKY OIL TECHNOLOGY, N.V.;
PETER BESSELINK; MEMORY METALS
HOLLAND, B.V.,

Defendants.

No. C-04-03843 RMW

ORDER REGARDING KENTUCKY OIL'S
OBJECTIONS TO PORTIONS OF
MAGISTRATE JUDGE'S ORDER**[Re Docket Nos. 193, 197]**

On September 6, 2006, the magistrate judge assigned to this case ruled on several motions to compel. Kentucky Oil Technology, N.V. ("KOT") objects under Fed.R.Civ.P. 72(a) to two aspects of the magistrate judge's order on these motions.

The magistrate judge rejected KOT's claim that communications with Wilfried van Moorleghem were protected by the attorney-client privilege, finding that KOT's evidence of Moorleghem's relationship to the KOT was insufficient to establish that he is the functional equivalent of a KOT employee. The magistrate judge's order on this point is not "clearly erroneous or contrary to law." *See* 28 U.S.C. § 636(b)(1)(A). The court necessarily rejects KOT's alternate argument that if the magistrate judge was correct, KOT should nonetheless be allowed to submit

1 more evidence because it did not know to what standard of proof it would be held when asserting
2 its claim of privilege.¹


3 The magistrate judge also ordered KOT to provide further responses to an interrogatory of
4 Schlumberger Technology Corporation ("STC") seeking dates of reduction to practice. KOT
5 objects that its counterclaim for patent invalidity has been dismissed, making irrelevant any
6 reduction to practice. Though expressing no opinion on KOT's objections to this aspect of the
7 magistrate judge's order, the court, pursuant to Civil L.R. 72-2, gives STC the opportunity to file an
8 opposition to KOT's objection regarding the reduction-to-practice interrogatory. Any such
9 opposition shall be filed by October 11, 2006, and shall not exceed two pages. No hearing will be
10 held absent further order of the court.

11 ORDER

12 For the foregoing reasons, the court:

- 13 1. overrules KOT's objections regarding privilege; and
- 14 2. grants STC the opportunity to file an opposition to KOT's objection regarding the
15 reduction-to-practice interrogatory.

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18 DATED: 9/26/06


19 RONALD M. WHYTE
United States District Judge

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28 ¹ The court expresses no opinion regarding KOT's motion to augment the record and for
reconsideration, which is currently pending before the magistrate judge.

1 Notice of this document has been electronically sent to:

2 **Counsel for Plaintiff:**

3 Andrew C. Ryan	ryan@cantorcolburn.com
Michael A. Cantor	
4 Thomas J Mango	tmango@cantorcolburn.com
William J. Cass	wcass@cantorcolburn.com
5 Benjamin J. Holl	benjamin.holl@dbi.com
Charles A. Reid, III	charles.reid@dbi.com

6 **Counsel for Defendants:**

7 Michael H. Bierman	mbierman@luce.com
8 Nicola A. Pisano	npisano@luce.com

9 **Counsel for Counterdefendants:**

10 Nancy J. Geenen	ngeenen@foleylaw.com
Simon E. Dance	
11 David B. Moyer	dmoyer@foley.com
Kimberly K. Dodd	kdodd@foley.com

12
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15
16 **Dated:** 9/27/06

SPT
Chambers of Judge Whyte